

Until that time there is no way to explain to the tribes what matters are under consideration. So the first stage is to gather preliminary information, or to compose a clear picture of the proposal if it is being developed by the Bureau.

2. Prepare an information packet.

The Bureau should put together a brief information packet consisting of a description of the proposal, an initial list of issues and impacts, maps, drawings, and any other material or references that can help the interested tribes to understand what is being proposed. At this stage, the purpose of the information is to enable participants to make an intelligent contribution.

3. Design the scoping process for each federal action.

There is no established or required procedure for scoping, but it is intended to be flexible and efficient. The process can be carried out by meetings, telephone conversations, written comments, or a combination of all three. Ad hoc workgroups of tribal leadership and representatives are particularly useful for identifying issues. The issue should drive the process, particularly whether its effect will be national in scope, or related to a region or to a specific tribe. It is important to tailor the type, the timing and the location of any meetings to the proposal at hand. For example:

- A site-specific construction project would be a better candidate for a central scoping meeting.
- A proposal for new regulations that would broadly impact all tribes is a good candidate for a series of regional meetings.
- As a general guide, meetings should not be confined to Washington, D.C. Agencies should try to solicit the views of tribal governments throughout various regions.

An important early step is to determine the level of interest in the proposal by contacting known tribal leaders and by suggesting in the initial scoping notice and information packet that all those who desire a meeting should call to request one.

It may not be possible to plan the whole scoping process at the outset without knowing who all the potential interested tribes are. The process can start with written comments, move on to an informal meeting, and hold further meetings as needed.

4. Identify the participants in the consultation process.

The consultation process is a mechanism for achieving understanding and consensus between federal decision makers and affected tribes with respect to federal actions. Accordingly, the participants should be those decision makers and the affected tribes.

a) **Bureau Participants.** To ensure that consultation involves the proper Bureau participants the Bureau should:

- i) identify, at the outset of the consultation process, Bureau personnel who are expected to have a significant role in the Bureau decision;
- ii) communicate the results of subsection i) of this section to tribes involved in the consultation process;
- iii) seek tribal input on which Bureau personnel would best serve the purpose of the consultation process; and
- iv) to the extent feasible, have those Bureau personnel who are expected to have a significant, high level role in the Bureau decision personally participate in the consultation process.

b) **Tribal Participants.** To ensure that consultation involves the proper tribal participants, the Bureau should:

- i) determine, at the outset of the consultation process, whether the Bureau views the proposed federal action as national, regional, subject-matter specific, or tribe-specific in scope;
- ii) for proposed federal action which the Bureau views as regional or subject-matter specific, seek additional views, including from national or regional tribal organizations and affected tribes, about whether additional tribes, beyond those identified by the Bureau, may have a significant interest in the proposed federal action;
- iii) for proposed federal action identified as regional or national in scope, identify the regional or national tribal organizations that may have expertise, and can facilitate dialogue with affected tribes, with respect to the proposed federal action; and
- iv) after notifying all those potentially affected tribes identified under subsections a), b), and c) of this subsection, defer to the expressed views of the tribes regarding who the tribal participants shall be with respect to any consultation

c) **Interagency Cooperation.** The Bureau will seek and promote cooperation and participation with other agencies that have jurisdiction over, special expertise with respect to, or related responsibilities regarding the Bureau's proposed legislation, action or policy.

5. Issuing notice to tribal governments.

The Bureau, in any consultation process, shall provide appropriate notification of each stage in the process. Written notice shall be provided where feasible. Where written notice to a tribe is appropriate, the Bureau shall provide notification under this section by mail and/or by facsimile, to the Chair (or other Chief Executive Officer) of the tribe, unless the tribe specifies a different means of notice or unless a different means of notice is required by law. The provisions of this subsection shall apply both to initial notices of the beginning of a consultation process, and to any subsequent notices regarding such a process. Notice may also be provided to interested tribal government organizations and representatives. The Bureau and the tribes have the goal to 1) maximize the use of technology to facilitate interactive exchanges with respect to the proposed decision, and 2) notify affected tribes that written comments are permitted and will be considered.

6. Conducting a scoping meeting with tribal governments.

Meetings with tribal governments should follow protocols appropriate for a government-to-government meeting that are determined by the participants and appropriate for the nature and scope of the meeting. Federal officials and tribal officials should be placed on an equal status in terms of the agenda and the room arrangements. The focus of a scoping meeting is to initiate a thorough identification and review of the issues prior to preparation of a decision, and not to debate the ultimate decisions. The scoping meeting should also identify areas that need further research and gather input from tribal leaders about how the consultation process should proceed.

B. Developing the Bureau Proposal

1. What to do with the comments

After comments have been received through the scoping process from tribal leadership and appropriate tribal organizations, the Bureau should evaluate them.

A good practice is to develop a post-scoping document in order to share with tribal leaders the preliminary decisions that have been made on what issues to cover. The post-scoping document may be as brief as a list of issues selected for analysis; it may consist of the "scope of work" produced by the Bureau for their own work or for a contractor; or it may be a special document that describes all the issues and explains why they were selected.

2. Allocating work assignments and setting schedules.

Following the scoping process, and the selection of issues to be covered, the Bureau should allocate the decision preparation work among the available resources. Tribal governments and their organizations should be considered as appropriate collaborative partners, particularly where negotiated rule-making or a Tribal Leader Task Force is created. Tribal governments may also be involved in specific research or writing tasks, especially where the tribes have special expertise or jurisdiction by law. A schedule should be set for completion of the work, a project manager should be designated and reviewers assigned.

3. Designing the process for consultation on the draft proposal

The Bureau shall consult with tribes to ensure meaningful and timely input by tribal officials. Consultation shall occur in a manner that is consistent with the overriding goal of assuring maximum tribal participation and informed federal decision making. The Bureau shall structure each consultation process to the extent feasible to conform to the expressed views of the tribes.

Forms of consultation are as follows:

a. **Negotiated Rule Making.** The Bureau should use negotiated rule making for developing significant regulations or other formal policies relating to tribal self-government, trust resources, or treaty and other rights, unless such a process would be inappropriate.

b. **Tribal Leader Task Force.** The Bureau should consult with a Tribal Leader Task Force on matters that impact tribes across the country where negotiated rule making is unavailable or is not desired by the tribes. A Tribal Leader Task Force may also be used, in appropriate circumstances, for consulting with tribes on regional or issue-specific (e.g., timber) matters. In each instance, the composition of the Task Force shall be determined by the Tribes, provided that the Task Force shall be a process open to all tribes and shall to the extent possible represent a cross-section of tribal interests with respect to the matter at issue. The number of meetings to be held, and their location, shall conform to the expressed views of the tribes, to the extent practicable and permitted by law.

c. **Series of Open Meetings.** The Bureau should consult with tribal leaders in a series of open meetings where appropriate for the action under consideration. Open meetings can be used for national, regional or subject-matter specific issues.